

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Rates and Charges for Steam and Hot Water Service.)	Case No. 09-453-HT-AEM
--	---	------------------------

In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of a Modification to an Existing Arrangement.)	Case No. 09-442-HT-AEC
---	---	------------------------

In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of an Arrangement with an Existing Customer.)	Case No. 09-441-HT-AEC
--	---	------------------------

In the Matter of the Application of Akron Thermal, Limited Partnership to Issue Three Promissory Long-Term Notes.)	Case No. 09-414-HT-AIS
---	---	------------------------

In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of Revised Tariffs.)	Case No. 09-315-HT-ATA
---	---	------------------------

ENTRY

The Commission finds:

- (1) On April 10, 2009, Akron Thermal Limited Partnership (Akron Thermal) filed an application in Case No. 09-315-HT-ATA (09-315) to modify and apply its tariff to certain hot water heating customers. According to its application, Akron Thermal is a public utility and a heating and cooling company that provides steam, hot water, and chilled water service to consumers in Akron, Ohio, and is subject to the jurisdiction of the Commission.
- (2) Akron Thermal further states that it has provided, pursuant to contract, hot water heating service to 96 customers in the Canal Park Condominium for over 20 years, but its current contract expires in September 2009. Akron Thermal states that it now

seeks to modify and apply its tariff to these customers so that hot water heating service will continue after the expiration of the contract. Akron Thermal states that the proposed tariff amendment is not an increase in tariffed rates, but is the application of an existing rate to the service provided by Akron Thermal to Canal Park Condominium hot water heating customers. If the Commission approves the proposed tariff proposal, Akron Thermal states that it will work with the Canal Park Condominium Board to inform them of the proposal and to explain how future bills will be calculated.

- (3) On May 18, 2009, Akron Thermal filed an application in 09-414-HT-AIS (09-414) for authority to issue three promissory long-term notes in the initial principal amounts of \$2,060,000, \$1,350,000, and \$250,000. Akron Thermal states that it has entered into three long-term promissory notes that relate to the restructuring of its indebtedness through the bankruptcy proceeding. Akron Thermal also contends that the purpose for which the proceeds will be applied is reasonably required by it to meet its present and prospective obligations to provide utility service.
- (4) On May 26, 2009, Akron Thermal filed an application in Case No. 09-441-HT-AEC (09-441) for approval of a reasonable arrangement of an agreement for steam service to Children's Hospital Medical Center of Akron (Hospital). Akron Thermal states that it has entered into an arrangement whereby it will provide to the Hospital and the Hospital will purchase all of its steam requirements on an uninterruptible basis. The contract will continue at least until March 31, 2011.
- (5) Also on May 26, 2009, Akron Thermal filed an application in Case No. 09-442-HT-AEC (09-442) for approval of a modification to an existing arrangement with Canal Place, Ltd. (Canal Place). According to Akron Thermal, Canal Place is a real estate development company that owns and operates a 1.5 million square foot redeveloped adaptive use complex in Akron, Ohio, to which Akron Thermal has provided steam and chilled water service. The agreement addresses service during the period August 1, 2009 until the end of the contract period.
- (6) On May 29, 2009, Akron Thermal filed in 09-453-HT-AEM (09-453) an application for an emergency increase in its rates and

charges for steam and hot water service provided throughout its service area. Akron Thermal states that, in addition to the 96 hot water customers, it also currently provides service to 52 steam customers. Akron Thermal further states that, although it filed a Chapter 11 petition in the United States Bankruptcy Court, *In re Akron Thermal, Limited Partnership*, Case No. 07-51884 (Bankr. N.D. Ohio), the Bankruptcy Court approved a plan of reorganization on June 18, 2007, and it emerged from bankruptcy in February 2009. According to its application, Akron Thermal's contract with its largest steam customer, the University of Akron (UA), accounting for 29.9 percent of its total steam sales volume, expired and UA elected not to renew or extend its contract. Akron Thermal also notes that it has taken a series of steps to mitigate the financial consequences of the loss of the UA load, but that under its current rates, it will not be able to meet its current operating expenses and is projected to have a negative cash balance by August 2009.

- (7) In its application in 09-453, Akron Thermal seeks an annual increase of \$4,195,561 in order to continue to render service to its customers. Akron Thermal seeks to recover the revenue increase through an adder to the monthly demand charge component of its current rates. According to Akron Thermal, if the adder is applied to all tariff customers and to the Children's Hospital and Canal Park contract rates, the amount of the temporary adder would be \$54.78 per Mlb, which would represent an overall rate increase to customers of 47.8 percent. However, if the Commission determines that only steam and hot water tariff customers should bear the emergency rate increase, the amount of the temporary adder would be \$81.49 per Mlb, or an overall increase of 71.6 percent.
- (8) Given the number of pending applications filed by Akron Thermal and the nature and subject matter of these applications, the Commission finds that Case Nos. 09-453, 09-442, 09-441, 09-414, and 09-315 should be consolidated.
- (9) The Commission's authority to order modifications of existing rates on a temporary basis arises under Section 4909.16 of the Revised Code. The Supreme Court of Ohio has consistently construed this statute as vesting the Commission with broad discretionary powers in determining when an emergency exists and in tailoring a remedy that will enable the public utility

concerned to meet that emergency. See *Cambridge v. Public Utilities Commission* (1953), 159 Ohio St. 88, and *Manufacturers Light and Heat Company v. Public Utilities Commission* (1955), 163 Ohio St. 787.

- (10) The Commission finds that a public hearing in these consolidated cases should be held. The hearing will begin at 10:00 a.m., on July 15, 2009, in Hearing Room 11-C, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215.
- (11) In order that all affected customers are given notice of the hearing and the pending applications, the applicant is directed to either publish the following notice at least 15 days prior to the hearing, one time only, in a newspaper or newspapers of general circulation throughout applicant's service area or serve a copy of the following notice on each of its customers by first class mail:

LEGAL NOTICE

Akron Thermal, Limited Partnership (Akron Thermal) has filed an application with the Public Utilities Commission of Ohio (Commission) for an emergency increase in rates it charges for providing hot water heat and chilled water service to its customers (Case No. 09-453-HT-AEM). Akron Thermal has also filed applications for approval of modifications to arrangements to two of its customers (Case Nos. 09-442-HT-AEC and 09-441-HT-AEC), an application to issue three promissory long-term notes (Case No. 09-414-HT-AIS), and an application for approval of revised tariffs (Case No. 09-315-HT-ATA). The Commission has consolidated these five cases and has scheduled a public hearing in these matters for July 15, 2009, at 10:00 a.m., in Hearing Room 11-C, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215.

Akron Thermal proposes that it be authorized to recover \$4,195,561 in additional annual revenue through an adder to the monthly demand charge component of its current rates. If the adder is applied

to all tariff customers and to the Children's Hospital Medical Center of Akron and Canal Place contract rates, the amount of the temporary adder would be \$54.78 per Mlb, which would represent an overall rate increase to customers of 47.8 percent. However, if the adder is applied to only steam and hot water tariff customers, the amount of the temporary adder would be \$81.49 per Mlb, or an overall increase of 71.6 percent.

The application may be viewed on the Commission's website at <http://dis.puc.state.oh.us> by searching for Case No. 09-453, selecting the May 29, 2009 date that the emergency rate application was filed, and then selecting "view image."

- (12) The Commission finds that the following procedural schedule should be followed. Akron Thermal should file, on or before July 1, 2009, any direct testimony and data in support of its application.
- (13) Motions to intervene and any direct testimony of any interested person should be filed on or before July 7, 2009.
- (14) In addition, the staff of the Commission should file by July 8, 2009, comments and recommendations as well as testimony regarding its review of the application.
- (15) The Commission also finds that, prior to the hearing, a prehearing conference should be held at 10:00 a.m., on July 9, 2009, in Hearing Room 11-C, at the offices of the Commission 180 East Broad Street, Columbus, Ohio 43215.

It is, therefore,

ORDERED, That a hearing be held in accordance with finding 10. It is, further,

ORDERED, That Akron Thermal provide notice of the hearing in accordance with finding 11. It is, further

ORDERED, That Akron Thermal file any direct testimony and data in support of its application on or before July 1, 2009. It is, further,

ORDERED, That staff file its comments and recommendations of the application as well as its direct testimony by July 8, 2009. It is, further,

ORDERED, That any interested person file its motion to intervene and any direct testimony on or before July 7, 2009. It is, further,

ORDERED, That a prehearing conference be held in accordance with finding 15. It is, further,

ORDERED, That Case Nos. 09-453, 09-442, 09-441, 09-414, and 09-315 be consolidated.

ORDERED, That a copy of this entry be served upon all parties of record.

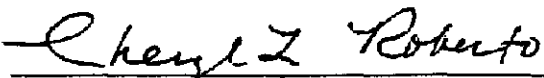
THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus

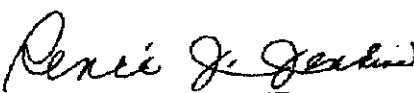
Valerie A. Lemmie


Cheryl L. Roberto

SEF:ct

Entered in the Journal

JUN 17 2009


Renee J. Jenkins
Secretary